IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP NO.220 OF 2004
Reserved on : 20th April, 2007
Date of Decision: 8th May, 2007.

Smt. Brijwala Awasthi	Petitioner
Versus	
H.P. University	Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the petitioner: Mr.D.Dadwal, Advocate.

For the respondent: Mr.S.R.Sharma, Advocate.

Sanjay Karol, J.

The petitioner is a student, who has obtained a degree of Bachelor of Arts (B.A.) and Bachelor of Education (B.Ed.) from University of Calcutta. The said degree of Bachelor of Arts is a two year course without English as a compulsory subject. Since she had not studied English as a subject and in order to obtain employment in the State of Himachal Pradesh, she enrolled herself with the Himachal Pradesh University to undertake examination in the subject of English in B.A. Ist year course. She applied in the month of February, 2001 and was given a provisional roll number on or

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Whether the reporters of Local Papers are allowed to see the Judgment?

around 23rd March, 2001 to appear in an examination to be conducted in April, 2001. She undertook the examination but her result could not be declared. Vide an undated letter Annexure P-4 dispatched by the respondent on 9th June, 2001, she was informed that on scrutiny it was found that there are discrepancies in her admission-form for TD/I April, 2001 examination and she was asked to fulfill certain conditions specified therein. For the purposes of adjudicating the controversy the relevant portion of the said letter is extracted hereinbelow:-

> "Reference your admission form for TD/I, admission from, following ticked (√) discrepancy/ies have been noticed. In order to timely declaration of your result, you are, advised to please settle the same within 21 days, failing which your candidature for the above cited examination shall STANDS SUSPENDED :
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> 1. that you have not enclosed BA-I, II, III send the photocopy (duly attested) in order to decide your eligibility to appear in the examination.
> 2. that late too/ balance fee of Rs. ____ is due from you, please send the same through cross ipos./ bank draft drawn in the favour of Finance Officer, H.P. University, Shimla-5.
> 3. that you are not registered yet with the University, please do so immediately and intimated the same to the undersigned.

4. you are appearing in the capacity of _____ private candidate, but your form is not duly attested by _____, please do me now and sent duplicate form duly attested.
5. Ineligible."

Vide letter dated 19.6.2001 (Annexure P-5) petitioner responded to the undated letter (Annexure P-4) and submitted a certified copy of her B.A. (2 year pass certificate) though already submitted alongwith her form to enable the university to declare her result. The result of the petitioner was not declared and she was sent another representation dated 2nd December, 2001 (Annexure P-6). Vide letter dated 19th December, 2001 (Annexure P-7), the respondent- University informed the petitioner that the result cannot be declared in the absence of the petitioner being formally registered with the University and she was asked to fulfill the codal formalities for further necessary action. Vide another letter dated 3rd February, 2002 issued on behalf of respondent-University, petitioner was informed that she is not eligible for a course in additional subject of B.A. as University of Calcutta is not recognized by the respondent-University. The matter did not rest there and the parties further corresponded in terms of petitioner's letters dated

11th March, 2002 and 16th April, 2002. The writ petition was filed thereafter.

Mr.Dadhwal has argued vehemently to contend that since the petitioner had been allowed to be enrolled and undertake examination by the respondent-University, therefore, at this juncture her result cannot be withheld. Learned counsel has further relied upon judgment of a Division Bench of this Court in Rupa Jaret vs. H.P. Board of School Education, 2003(3) SLC 287 and also further relied upon Shri Krishan v. The Kurukshetra University, AIR 1976 SC 376, Ashok Chand Singhvi vs. University of Jodhpur and others, (1989) 1 SCC 399, Tariq Islam v. Aligarh Muslim University and others, AIR 2001 SC 3058 and Jahar Singh vs. Union of India and others, (1996) 10 SCC 341 to contend that if the petitioner has been allowed to be enrolled and undertake the examination then the Educational Institution should not withhold the result, particularly, when the student has not been at fault. It is further contended that the acceptance of fee by the respondent not only with regard to the 1st year but also for 2nd and 3rd years would estoppe the respondent from raising the issue of equivalence and non-fulfillment of eligibility criteria laid down by the University.

Per contra, Shri Sharma, learned counsel appearing for the respondent has submitted that petitioner's enrolment with the University, even though conditional, is wrong and illegal. He has relied upon the various provisions of First Ordinances of Himachal Pradesh University, 1973 (Volume I) (hereinafter referred to as Ordinance) to contend that any direction by this Court as prayed for would be illegal.

He has also relied upon Central Board of Secondary Education vs. Nikhil Gulati and another, reported in (1998) 3 SCC 5 and Shri Biri Singh vs. H.P. University and another, reported in 1999 (1) Shim. L.C. 265.

To appreciate the controversy in issue, it is relevant to first see the provisions of Ordinances. Chapter V deals with private candidates. Ordinance 5.1 and Ordinance 5.2(c) stipulate:-

> "5.1 Save as otherwise hereinafter provided no person shall be allowed as a private candidate in any examination of the University."
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> 5.2(c) those who have obtained the Bachelor's degree in Faculty of Languages, Performing & Visual Arts, Social Science or Science but wish to qualify in an additional optional subject. In case of a Science subject the candidate shall study in an affiliated college and produce a certificate from the principal of the college that he

has completed the prescribed course: Provided that the candidate will take examinations for Part-I, II and III. He/She shall be allowed to sit for Part-I after completion of one year and for Part-II and III after another year."

Chapter VI deals with conduct of the examination. Ordinance 6.16, Ordinance 6.17(a) and Ordinance 6.19 provides:-

"6.16 The Controller of Examinations may entertain an applications for appearing at an examination (i) upto 10 days after the last date prescribed for submission of such applications on payment of a late fee of Re.1/- per day and (ii) thereafter, upto fourteen days before the commencement of the examination, on payment of an extra late fee of Rs.5/- per day.

In special circumstances, however, the Vice Chancellor may for reasons to be recorded in writing, allow acceptance of an application for appearing at an examination after the last date prescribed for receipt of admission forms. However, the total amount of late fee shall not exceed Rs. 100/-.

6.17.(a) After satisfying himself that the application is in order in all respects, the Controller of Examinations shall issue through the head of the institution concerned in the case of the regular candidates and direct to the private candidates an admission card, permitting the

candidate to appear at the examination centre allowed to him.

6.19 The Vice Chancellor may withdraw the permission to appear at an examination, if at any stage it is found that the candidate was not eligible for admission to that examination, or has been subsequently rusticated or expelled from a college or a teaching department of University or any other University after the submission of his application form."

Chapter VIII deals with various faculties including faculty of languages and Bachelor of Arts. Ordinance 8.2 stipulates that the candidate shall be required to take English compulsory, to be read for all the three years and Hindi/Sanskrit as core qualifying subject in 2nd year only and any two of elective subjects as are notified therein. Chapter XX deals with equivalence of examination of other Universities. Ordinance 20.1 is reproduced hereinbelow:-

"20.1 The equivalence of an examination of any board or institution or institute or deemed university or university established by law in India or of a Foreign University or of any other examination with a corresponding examination of the University with or without any condition, shall be determined by the Vice Chancellor on its advice or Equivalence Committee consisting

of deans of all Faculties with the Dean of studies as the convener."

Admittedly in the present case petitioner has graduated in a degree of Bachelor of Arts from University of Calcutta, which is a 2 year course. She has not studied English as a subject while obtaining such a degree. In view of the provisions contained in Chapter VIII, degree obtained by petitioner from University of Calcutta has not been made equivalent. That apart, a private candidate can appear and qualify an additional optional subject only if he has obtained the Bachelor's degree in Faculty of Languages, Performing & Visual Arts, Social Science or Science in terms of Ordinance 5.2. In this view of the matter, petitioner cannot be allowed to register and undertake examination in the subject of English as a private candidate.

In the present case, petitioner applied as a private candidate with the respondent-University to qualify the subject of English on the basis of 2 year pass Bachelor of Arts degree obtained from the University of Calcutta. Petitioner was enrolled provisionally and she was allowed to appear in the examination held in April, 2001 on the strength of roll number issued to her. It is not clear whether the same was provisional or not. Be that as it may be, vide Annexure P-4 in June, 2001 petitioner was

informed that scrutiny of her admission form showed certain discrepancies, which were required to be rectified. She was informed of the same and was requested to have the needful done failing which her examination would stand suspended. In fact she was informed that she was "**ineligible**". Vide letter dated 19th December, 2001 (Annexure P-7) she was informed that in the absence of registration, her result cannot be declared. She was directed to contact the Deputy Registrar (Registration) to allot her a registration number after fulfilling codal formalities. Vide letter dated 3rd February, 2002 (Annexure P8) petitioner was also informed that she was not eligible for registration for additional B.A. as University of Calcutta was not recognized by the respondent-University. It seems that petitioner moved a representation through local MLA, who was also informed vide letter dated 21st May, 2002 that the case of petitioner for appearing in additional paper of B.A. has been carefully examined and that the same is not covered under the provisions of Ordinances of respondent-University.

Degree of Bachelor of Arts issued by the University of Calcutta being 2 year pass examination has not been certified to be a degree in equivalence as per Ordinance 20.1 under Chapter XX of the Ordinance. Ordinance 8.1 stipulates duration of

course as 3 years with English as a compulsory subject for awarding of any Degree of Bachelor of Arts. Ordinances 5.1 and 5.2 restrict the condition under which a private candidate can appear in an examination conducted by the respondent-University and that too only those persons who have obtained the Bachelor's degree in Faculty of Languages, Performing & Visual Arts, Social Science or Science can study and qualify any additional optional subject. A two year degree of Arts, without English as a subject, awarded by the University of Calcutta cannot be recognized under the provisions of the Act and the Ordinances of the respondent-University. The enrolment of the petitioner for undertaking the examination in the subject of English is an error and declaration of a result thereof would be an illegality. There cannot be any equity in favour of the petitioner and estoppel against the respondent-University in view of the existing provisions of the statute and Ordinance. The stand taken by the respondent requires to be reproduced:-

> " As per practice of the University, Roll Nos. to all the candidates are issued provisionally subject to fulfilling the requirements of eligibility of these candidates, if any, by them before declaration of their results. The Roll No. to the petitioner was also issued provisionally and since

> she was not found eligible owing to the fact that she had already passed B.A. degree except English subject from Kolkatta University, her result was not declared pending decision on her eligibility finally. Subsequently, on her petition, the Vice Chancellor had acceded to her request for the declaration of result subject to her registration with the University. The Registration and Migration Authority of the University, under the Controller of Examination, however, did not find her eligible to be registered with the H.P. University due to the fact that on the issue of the equivalence, it was found that the petitioner was not eligible for appearing in additional paper in the subject of English of B.A. Degree as the B.A. Degree of Kolkatta University is not recognized by the H.P. University. Hence on this account, the petitioner was found ineligible for registration in the University by the Registration and Migration Section of the University. Hence the result of the petitioner was not declared."

Thus, it is clear that the University rightly did not declare the result of the petitioner.

The case law cited by learned counsel for the petitioner is totally distinguishable on facts.

Shri Krishan (*supra)* and *Ashok Chand Singhvi* (*supra*) have been considered and distinguished by

this Court in *Shri Biri Singh (supra)*. In Shri *Biri Singh (supra*) after considering the aforesaid issues, a Division Bench of this Court has held that a person cannot be allowed to seek benefit out of a serious error committed in flagrant violation of the Statutes of the University and seek assistance of the Court for protection of such undeserved benefit which if granted would be opposed to law.

Tariq Islam (supra) was a case where the question of equivalence in qualification was examined in detail and the Academic Council had approved the admission of the petitioner to his M.Phil. and Ph.D. courses. It was only at the time of appointment of petitioner that a challenge to equivalence was raised on the ground that B.A. (Hons) degree possessed by him from foreign University was not equivalent to Master's degree recognized for the purposes of appointment. The Court disapproved the action of the respondent and held that acceptance of equivalence only for the purposes of admission to M.Phil. and Ph.D. courses and not for other purpose would lead to anomalous results. In this back ground, Court held that if petitioner has been permitted to undertake an examination successfully then for the purposes of employment the benefit cannot be denied.

Jahar Singh (supra) was a case where petitioner was denied benefit of his having appeared

and qualified in an examination. In the absence of any explanation of the respondents in permitting two other persons having appeared and appointed by the respondents, the Supreme Court in the peculiar facts of the case interfered. This is not the case in hand.

Rupa Jaret was a case in which relief granted was in the peculiar facts and circumstances of that case. Special equities had arisen in favour of the person, who had been admitted and allowed to study in 11th standard for one year and at the end of academic session he was permitted to undertake examination also. The Board authorities had permitted the same without demure. In this view of the matter, the Court intervened and directed declaration of his result. The facts in the present case are diametrically opposite as has been mentioned hereinabove.

Learned counsel for the respondent has relied upon *Central Board of Secondary Education* (supra), to contend that allowing the writ petition and directing the respondent-University to declare the result would put the rule of law to mockery and rather promote the rule of man. I am in agreement with him.

In fact while dealing with the case wherein admissions were made pursuant to interim orders by various Courts, the Apex Court in Guru Nanak Dev

University vs. Parminder Kr. Bansal and others, reported in (1993) 4 SCC 401, has held as under:-

> "From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by themselves taking over their functions."

Principles of estoppel and legitimate expectations cannot be pressed into service to seek any benefit, which may be in direct contravention of law. Similarly, simply because petitioner has

appeared in an examination, provisional though, cannot claim equity.

For all the aforesaid reasons, the writ petition is dismissed with no order as to costs.

May 8, 2007
(C)

(Sanjay Karol),
Judge